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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th November 2011

No. 10055—li/1(B)-19/2004-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th April 2011 in Industrial Dispute Case No. 40 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Gurudwar Singh Sabha, Bhubaneswar and their Workman Shri Bhim Bahadur Singh was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 40 OF 2004

Dated the 8th April 2011

Present :

Shri S. K. Dash
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of . . . First Party—Management
M/s Gurudwar Singh Sabha, Bhubaneswar
And

Their Workman . . . Second Party—Workman
Shri Bhim Bahadur Singh

Appearances :

For the First Party—Management	. . .	None
For the Second Party—Workman	. . .	Shri S. Mishra, Advocate Smt. M. Mishra, Advocate Shri S. S. Mohapatra, Advocate

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 4102—li/1(B)-19/2004-LE., dated the 13th May 2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of service of Shri Bhim Bahadur Singh, ex Security Guard with effect from the 3rd February 2003 by the Secretary, Gurudwar Singh Sabha is legal and/ or justified ? If not, to what relief Shri Singh is entitled ?”

3. The case of the workman in brief is that he joined under the management as Security Guard and worked till the 2nd February 2003 continuously. Initially he was getting salary of Rs. 100 per month which was subsequently enhanced from time to time and at the time of his termination he was getting Rs. 1,935 per month. His service was terminated without any reason with effect from the 3rd February 2003. The workman was suspended vide letter, dated the 27th January 2002 on certain unsubstantiated facts but no enquiry was held against the workman. The management has also not followed the provisions of Section 25-F of the Industrial Disputes Act while terminating his service. Therefore the workman raised an industrial dispute before the labour authority and when the conciliation failed the matter was informed to the Government and this reference has been received from the Government and this I. D. Case has been initiated wherein the workman has prayed for reinstatement in service with full back wages.

4. The management appeared but not filed any written statement and subsequently was set *ex parte*.

5. In order to substantiate his plea, the workman has examined himself as W. W. 1 and proved the documents marked as Exts. 1 and 2.

6. According to W. W. 1, he was engaged as Security Guard by the management in the year 1968 on a salary of Rs. 100 per month and it was enhanced from time to time and he was getting Rs. 1,935 per month till he was refused employment on the 3rd February 2003. He had worked continuously to the satisfaction of the authorities from the date of his appointment till the date of termination of his service. He was never charge sheeted by the management and no enquiry was also held against him for any misconduct. But while working as such, on the 27th January 2002 the management placed him under suspension alleging negligence in duty. Thereafter without any enquiry he was removed from the service without following the mandatory provisions of Section 25-F of the Industrial Disputes Act. He was not gainfully employed anywhere after termination of his service. Ext. 1 is the xerox copy of the suspension order and Ext. 2 is the xerox copy of letter, dated the 17th July 2003 directing the workman to vacate the quarters wherein it has been mentioned that the management committee has removed the workman from duty with effect from the 3rd February 2003. The entire evidence of W. W. 1 remained unchallenged. The workman has taken the plea that he was working continuously from the date of appointment till the date of termination. So it is

presumed that the workman has completed 240 days of service preceding twelve calendar months from the date of termination. Admittedly at the time of termination of service of the workman, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act which is a mandatory and precondition one. So in this background on careful consideration of all the materials available in the case record I came to the finding that the termination of service of the workman with effect from the 3rd February 2003 by the management is neither legal nor justified and he is entitled to be reinstated in service.

7. Regarding back wages as per settled principle of law the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further according to the authority reported in 2004 (Supp.) OLR 694 that when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of granting full back wages a lump sum amount of Rs. 40,000 will meet the ends of justice in this case.

8. Hence ordered :

That the termination of services of Shri Bhim Bahadur Singh, ex Security Guard with effect from the 3rd February 2003 by the Secretary, Gurudwara Singh Sabha is illegal and unjustified. The workman Shri Singh is entitled to be reinstated in service with a lump sum amount of Rs. 40,000 (Rupees forty thousand) only in lieu of back wages. The management is directed to implement this Award within a period of one month from the date of its publication failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. DASH

8-4-2011

Presiding Officer

Labour Court, Bhubaneswar

S. K. DASH

8-4-2011

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government